

Container Products, Inc. and United Steelworkers of America, Local 1622, AFL-CIO and David A. Woods. Case 14-CA-23079

September 30, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND COHEN

Upon a charge filed by United Steelworkers of America, Local 1622, AFL-CIO, the Union, on June 21, 1994, and amended charges filed by the Union and David A. Woods, an individual, on June 22 and August 5, 1994, the General Counsel of the National Labor Relations Board issued a complaint on August 9, 1994, against Container Products, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On September 12, 1994, the General Counsel filed a Motion for Default Summary Judgment with the Board. On September 14, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated August 25, 1994, notified the Respondent that unless an answer were received by August 31, 1994, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Michigan corporation, with an office and manufacturing facility in Fenton, Missouri, was engaged in the manufacture of steel barrels from

about 1984 until the sale of the Respondent's facility to Nesco Container Corporation on about December 22, 1993. During the calendar year ending December 31, 1993, Respondent purchased and received at its Fenton, Missouri facility goods valued in excess of \$50,000 directly from points outside the State of Missouri, and also sold and shipped from its Fenton, Missouri facility goods valued in excess of \$50,000 directly to points outside the State of Missouri. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

All individuals occupying production and maintenance jobs in or about the Company plant located at Fenton, Missouri, EXCLUDING office clerical and professional employees, guards, and supervisors as defined in the Act.

Since about 1984, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and since about 1984, the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from December 1, 1992, to November 30, 1995.

At all times since about 1984, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Section 10 of the collective-bargaining agreement described above provides that, on the closing of the Respondent's facility, employees who have 5 or more years of continuous service with the Respondent and do not accept employment with the buyer of the facility within 6 months of the sale of the facility are entitled to specified amounts of severance pay.

On December 22, 1993, the Respondent sold its facility. Since about June 23, 1994, the Respondent has failed to continue in effect all the terms and conditions of the agreement described above by failing to pay employees severance pay in accordance with the terms of section 10 of the agreement.

Although the terms and conditions of employment described above are mandatory subjects for the purpose of collective bargaining, the Respondent engaged in the conduct described above without the Union's consent.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), Section 8(d), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing, since June 23, 1994, to continue in effect all the terms and conditions of the 1992-1995 collective-bargaining agreement with the Union by failing to pay employees severance pay in accordance with section 10 of the agreement, we shall order the Respondent to comply with section 10 of the agreement regarding severance pay and make the unit employees whole for any loss of earnings attributable to its failure to do so. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Finally, as the Respondent has sold the subject facility, we shall order Respondent to mail copies of the notice to all employees who were employed by Respondent at the facility at the time of the sale.

ORDER

The National Labor Relations Board orders that the Respondent, Container Products, Inc., Fenton, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with United Steelworkers of America, Local 1622, AFL-CIO, as the exclusive bargaining representative of the employees in the unit described below, by failing to pay employees severance pay in accordance with section 10 of the 1992-1995 collective-bargaining agreement:

All individuals occupying production and maintenance jobs in or about the Company plant located at Fenton, Missouri, EXCLUDING office clerical and professional employees, guards, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with the terms of section 10 of the 1992-1995 collective-bargaining agreement with the Union regarding severance payments, and make whole the unit employees for any loss of earnings resulting from its unlawful failure to do so since June 23, 1994, as set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Mail signed and dated copies of the attached notice marked "Appendix"¹ to all employees employed by the Respondent at the Fenton, Missouri facility at the time the Respondent sold that facility at their last known address. Copies of the notice, on forms provided by the Regional Director for Region 14, shall be mailed by the Respondent immediately upon receipt.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. September 30, 1994

William B. Gould IV, Chairman

James M. Stephens, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain with United Steelworkers of America, Local 1622, AFL-CIO as the exclusive collective-bargaining representative of our employees in the following unit by failing and refusing to make severance payments to the unit employees in

accordance with section 10 of the 1992–1995 collective-bargaining agreement:

All individuals occupying production and maintenance jobs in or about the Company plant located at Fenton, Missouri, EXCLUDING office clerical and professional employees, guards, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL comply with the terms of section 10 of the 1992–1995 collective-bargaining agreement with the Union regarding severance payments, and WE WILL make whole the unit employees for any loss of earnings resulting from our unlawful failure to do so since June 23, 1994, with interest.

CONTAINER PRODUCTS, INC.